



STATE OF NEW JERSEY

In the Matter of Bernard Alvarez,
Police Lieutenant (PM0927A),
Elizabeth

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2020-1061

Administrative Appeal

ISSUED: February 13, 2020 (JH)

Bernard Alvarez, represented by Peter B. Paris, Esq., requests that he be provided with a make-up for the promotional examination for Police Lieutenant (PM0927A), Elizabeth.

By way of background, the promotional examination for Police Lieutenant (PM0927A), Elizabeth was announced on July 1, 2019 with an online application filing deadline of July 22, 2019 and all applications had to have been submitted by that date.¹ The subject test was open to employees in the competitive division who had an aggregate of one year of continuous permanent service in the title of Police Sergeant as of the closing date of September 30, 2019. The subject test was administered October 10, 2019. A review of the record indicates that the appellant was suspended for 45 working days and demoted to the Police Officer title for disciplinary reasons effective November 20, 2018. It is noted that the appellant appealed and the matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case. Subsequently, the appellant and the City of Elizabeth entered into a settlement agreement on September 5, 2019 in which the parties agreed to reinstate the appellant to the Police Sergeant title effective October 1, 2019. *See In the Matter of Bernard Alvarez* (CSC, decided October 23, 2019).

¹ *N.J.A.C.* 4A:4-2.1(e) provides, in part, that applications for promotional examinations shall be submitted no later than 4:00 p.m. on the announced application filing date.

On appeal, the appellant argues that “since the severe disciplinary action of demotion was amended, this amounts to an error by the appointing authority under *N.J.A.C.* 4A:4-2.9(b)(5).² Alternatively, this matter is similar to the situations contemplated by *N.J.A.C.* 4A:4-2.9(d).³ In sum, because he was not restored to the position of Sergeant until October 1, 2019, Sgt. Alvarez was reasonably unable to take the Lieutenant’s test on October 10, 2019.”

CONCLUSION

At the outset, it is noted that it is not clear why the appellant believes he is entitled to a make-up, given that the crux of the matter is his eligibility for the subject test and whether he may file an application after the closing date. Nevertheless, the appellant’s arguments will be addressed first. Although the appellant maintains that his demotion and reinstatement constitute appointing authority error, the Commission cannot conceivably find error in this matter given that under the terms of the settlement agreement, the charges were sustained. In this regard, it does not appear that the parties deemed the demotion to have been in error as the demotion was not rescinded under the terms of the settlement agreement but rather, Alvarez’s demotion to the Police Officer remained in effect for over 10 months. Furthermore, it is noted that pursuant to the terms of the settlement agreement, Alvarez “shall withdraw his appeal with regard to the charges and specifications and resulting penalties set forth in the Preliminary Notice of Disciplinary Action dated November 19, 2018 . . . Appellant waives any

² *N.J.A.C.* 4A:4-2.9(b) provides that for professional level engineering, police, fire, correction officer, sheriff’s officer, juvenile detention officer and other public safety promotional examinations, make-ups may be authorized only in cases of:

1. Debilitating injury or illness requiring an extended convalescent period, provided the candidate submits a doctor’s certification containing a diagnosis and a statement clearly showing that the candidate’s physical condition precluded his or her participation in the examination;
2. Death in the candidate’s immediate family as evidenced by a copy of the death certificate;
3. A candidate’s wedding which cannot be reasonably changed as evidenced by relevant documentation;
4. When required for certain persons returning from military service; or
5. Error by the Civil Service Commission or appointing authority.

³ *N.J.A.C.* 4A:4-2.9(d) provides that employees who have been removed for disciplinary reasons or indefinitely suspended pending criminal charges and are thereafter exonerated shall have an opportunity to take promotional examinations that have not yet been administered, or make-up examinations for active promotional lists, if the suspension or removal resulted in the employee’s non-participation in the promotional examination.

and all claims and rights he may have against the Respondent . . . including but not limited to claims for backpay and differential backpay associated with his suspension and demotion to Police Officer related to this Disciplinary Action . . . Appellant specifically releases any and all causes of action, claims or damages whether known or unknown arising from or relating in any way to this Disciplinary Action.”

Given that the appellant was not removed or indefinitely suspended, *N.J.A.C. 4A:4-2.9(d)* does not govern this matter. Nevertheless, even assuming *N.J.A.C. 4A:4-2.9(d)* were applicable, it is noted that this provision was meant to provide an individual who is removed on disciplinary charges the opportunity to participate in the promotional examination by providing a make-up examination only in the event that the individual is **fully** exonerated of the charges, both criminal and administrative in nature. *See In the Matter of Richard Girman* (MSB, decided June 11, 2003), *aff'd In the Matter of Richard Girman*, Docket No. A-6285-02T5 (App. Div. November 19, 2005). As noted previously, the parties entered into a settlement agreement during the pendency of the hearing at OAL. Under the terms of the settlement agreement, the charges were upheld and the appellant was required to serve a 45 working day suspension and was demoted for 10 months. Thus, he was not fully exonerated and he would not be entitled to a make-up examination. *See In the Matter of Richard Girman, supra.*

Regarding Alvarez’s eligibility for the subject test, *N.J.A.C. 4A:4-2.6(a)1* provides that applicants for promotional examinations shall have one year of continuous permanent service for an aggregate of one year **immediately preceding** the closing date in a title or titles to which the examination is open. Aggregate service shall be calculated in the same manner as seniority as set forth in *N.J.A.C. 4A:4-2.15*.⁴ In this regard, *N.J.A.C. 4A:4-2.6(a)1* does not merely require that a candidate possess an aggregate one year of continuous permanent service in

⁴ *N.J.A.C. 4A:4-2.15* provides, in pertinent part:

(d) In calculating seniority for promotional examinations:

1. Continuous permanent service accumulated prior to an intergovernmental transfer pursuant to *N.J.A.C. 4A:4-7.1A* (except as provided in (d)3 below), voluntary furloughs and the following types of leaves shall not be deducted from seniority:
 - i. All leaves with pay including sick leave injury (SLI);
 - ii. Military, educational, gubernatorial appointment, personal sick, disability, family, furlough extension, and voluntary alternative to layoff leaves of absence without pay; and
 - iii. In local service, leave without pay to fill elective office . . .

(e) Suspensions, other leaves of absence without pay not identified in (d) above, and any period an employee is laid off shall be deducted when calculating seniority.

a requisite title, but that the candidate is serving in that title on the closing date. A review of the record finds that Alvarez received a regular appointment to the Police Sergeant title effective February 7, 2012. However, as noted above, effective November 20, 2018, Alvarez was demoted to the Police Officer title and reinstated to the Police Sergeant title on October 1, 2019. As such, Alvarez was not permanent in a title to which the exam was open as of the September 30, 2019 closing date and thus, he is not eligible for the subject promotional exam. Moreover, the opportunity to apply for and take a promotional examination was neither explicitly stated nor inferred in the settlement agreement. As such, Alvarez has not demonstrated that eligibility for the PM0927A test was an intended consequence of the agreement.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 12TH DAY OF FEBRUARY, 2020

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries	Christopher S. Myers
and	Director
Correspondence	Division of Appeals and Regulatory Affairs
	Civil Service Commission
	Written Record Appeals Unit
	P.O. Box 312
	Trenton, New Jersey 08625-0312

c: Bernard Alvarez
Peter B. Paris, Esq.
Kelly Glenn
Records Center